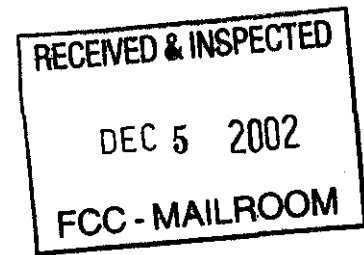


Before the
Federal Communications Commission
Washington, D.C. 20554



In the Matter of)	
)	
Revision of the Commission's Rules)	
To Ensure Compatibility with)	CC Docket No. 94-102
Enhanced 911 Emergency)	
Calling Systems)	
)	
Petition of City of Richardson, Texas)	
)	

ORDER ON RECONSIDERATION

Adopted November 21, 2002

Released: November 26, 2002

By the Commission:

I. INTRODUCTION

1. In *City of Richardson*,¹ we adopted rules clarifying what constitutes a valid Public Safety Answering Point (PSAP) request so as to trigger a wireless carrier's obligation to provide enhanced 911 (E911) service to that PSAP within **six** months. In response to two petitions for reconsideration of that order, we modify our rules to provide additional clarification on the issue of PSAP readiness.

2. First, we adopt procedural guidelines for requesting documentation predictive of a PSAP's readiness to receive and utilize the enhanced 911 service it has requested. Specifically, we provide that, where a wireless carrier requests such documentation from a PSAP within 15 days of receiving the PSAP's request for E911 service, the PSAP must respond within 15 days or the carrier's six-month implementation period will be tolled until such documentation is provided. Second, we clarify that the readiness showing is for the purpose of **commencing** the wireless carrier's six-month implementation obligation; and we establish a procedure whereby wireless carriers that have completed all necessary steps toward E911 implementation that are not dependent on PSAP readiness may have their compliance obligation temporarily tolled, if the PSAP is not ready to receive the information at the end of the six-month period and the carrier **files** a certification to that effect with the Commission. Finally, we clarify that nothing in our rules precludes wireless carriers and PSAPs from mutually agreeing to an implementation schedule different from that prescribed by our rules.

3. The actions we take today are intended to promote communication between wireless carriers, LECs and PSAPs and to provide further clarity regarding their respective obligations in implementing wireless E911. Wireless E911 implementation is very situation-specific and can vary significantly from jurisdiction to jurisdiction and from carrier to carrier, depending on a number of factors such as network configuration, PSAP equipment, and location technology being used. The clarifications we adopt in this order are intended to facilitate this implementation process by encouraging parties to communicate with each other early in the E911 implementation process, and to maintain a constructive, on-going dialog throughout the implementation process.

¹ Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling System, CC Docket No. 94-102, *Order*, rel. Oct. 10, 2001 (*City of Richardson*).

II. BACKGROUND

4. Section 20.18(j) of the Commission's rules provides that certain commercial mobile radio service (CMRS) providers must make Phase I and Phase II E911 service available "only if the administrator of the designated Public Safety Answering Point has requested the services required ... and is capable of receiving and utilizing the data elements associated with the service, and a mechanism for recovering the PSAP's costs of the enhanced 911 service is in place."

5. In response to a petition filed by the City of Richardson, Texas, the Commission amended its rules to clarify what constitutes a valid PSAP request for Phase I and Phase II E911 services.³ Specifically, the Commission determined in *City of Richardson* that a PSAP request will be deemed valid if the PSAP can demonstrate that:

(1) a mechanism is in place for recovering the PSAP's costs; (2) the PSAP has ordered the equipment necessary to receive and use the E911 data to be installed no later than six months following the PSAP's request; and (3) the PSAP has made a timely request to the appropriate local exchange carrier (LEC) for the necessary trunking and other facilities, including any necessary Automatic Location Identification (ALI) database upgrades.

In the alternative, we determined that a PSAP requesting Phase II service that is Phase I-capable using a Non-Call Associated Signaling (NCAS) technology need only demonstrate that a funding mechanism is in place and that it has made a timely request to the appropriate LEC for the necessary ALI database upgrades. The information specified in section 20.18(j) is considered predictive of a PSAP's ability to receive and use E911 data by the end of the six-month period allotted for carrier implementation. Thus, a wireless carrier that receives a request for either Phase I or Phase II E911 service may request that the PSAP provide this information to verify that its request is valid.

6. Two parties filed Petitions for Reconsideration of the Commission's decision in *City of Richardson*. Cingular challenges the validity of the Commission's decision on both substantive and procedural grounds. It argues that the decision contradicts Commission precedent, which allegedly holds that the PSAP must be ready to receive E911 data when it makes its request.⁴ In addition, Cingular raises several procedural arguments based on the requirements of the Administrative Procedure Act (APA).⁵ Small and rural carriers filing comments on the Petition for Reconsideration also challenge the decision on a procedural basis, arguing that the decision contravenes the provisions of the Regulatory Flexibility Act (RFA) because it does not take account of, and attempt to reduce, the disproportionate burdens placed on small and rural carriers.⁶

7. Sprint PCS does not challenge the validity of the decision, but requests certain amendments, including: (1) that the six-month period be tolled pending the PSAP's provision of the necessary readiness documentation; (2) that the PSAP be required to obtain the LEC's commitment to complete

² 47 CFR §20.18(j).

³ City of Richardson, Appendix B.

⁴ Cingular Petition at 6-10. Cingular continues to argue that PSAPs should not be able to request E911 service until they are actually ready to receive and utilize the data requested. Cingular also requests that the Commission establish an expedited dispute resolution process for resolving readiness issues. *Id.* at 14.

⁵ *Id.* at 10-11. 5 U.S.C. 553(b) and (c).

⁶ See, e.g., Dobson Comments at 2-3.

⁷ Sprint Petition at 12-13.

ALI database upgrades within the six-month period;’ and (3) that PSAPs be required to adopt a standardized interface for the connection between the PSAP’s ALI database and the trunkline from the carrier’s Mobile Positioning Center (MPC), or, in the alternative, that carriers be permitted more than six months to provide Phase II data where a PSAP elects to use a customized interface.’

8. A total of 15 comments and reply comments were filed in response to a Public Notice issued by the Wireless Telecommunications Bureau (Bureau) on December 12, 2001.¹⁰

III. DISCUSSION

A. Tolling of Six-Month Period

9. Background. Sprint argues in its Petition that the six-month period for carrier performance should be tolled pending the receipt of the readiness documentation requested of the PSAP.” Both APCO and Voicestream generally concur.” At present, the rule does not specify time limits for responding to a carrier’s request for readiness documentation.

10. **Discussion.** As detailed below, we hereby modify our implementing rules along the lines suggested by Sprint and APCO, to provide for tolling of the six-month E911 implementation period” in certain instances where the PSAP does not provide readiness documentation simultaneous with its request for E911 service. Specifically, where a wireless carrier requests such documentation in writing within 15 days of receiving the PSAP’s request for E911 service, the PSAP will have 15 days from the date of service of such data request in which to provide the documentation.¹⁴ If the PSAP fails to respond in writing within 15 days, the six-month implementation period will be tolled until the PSAP supplies the requested information. A wireless carrier is free to request readiness documentation from a PSAP more than 15 days after receipt of the PSAP’s E911 service request, but in this event, the PSAP’s failure to provide the documentation within 15 days will not toll the six-month period.”

⁸ *Id.* at 5-6.

⁹ *Id.* at 7-10.

¹⁰ See Appendix A.

¹¹ Sprint Petition at 12-13. See also Cingular Petition at 14.

¹² APCO recommends that PSAPs be given 15 days to provide the necessary documentation and that the six-month period be tolled only after their failure to comply with this time requirement. APCO Comments at 4. This approach is supported by both Sprint and Voicestream. Sprint Reply Comments at 2, Voicestream Reply Comments at 1. See also Cingular Petition at 14, CTIA Comments at 3-4, Dobson Comments at 4-5, Nextel Comments at 5, NDNC Comments at 3-4, VoiceStream Comments at 5-6, Cingular Reply Comments at 12-13.

¹³ The six-month carrier implementation period specified in section 20.18 may be modified by mutual agreement between the wireless carrier and the PSAP. 47 CFR § 20.18 See *infra* at para. 27.

¹⁴ The carrier’s request and the PSAP’s response shall be served in accordance with the provisions of section 1.47 of the Commission’s rules. 47 CFR § 1.47.

¹⁵ Under these modifications to the E911 implementation requirements, the E911 request process will work as follows. The wireless carrier’s six-month implementation will commence on the date it receives the PSAP’s request for Phase I or Phase II service. At that point, the carrier has 15 days to request documentation from the PSAP concerning its readiness to use the E911 data requested, during which the six-month period will continue to run. If the carrier declines to seek documentation during the 15-day period, the six-month period will continue to run uninterrupted. If the carrier chooses to request readiness documentation from the PSAP, the PSAP will have 15 days after service of the carrier’s request to provide the requested documentation, during which time the six-month implementation clock will continue to run. The six-month period will only be tolled if the PSAP fails to provide the necessary documentation within the allotted 15 days. In that event, the six-month period will be tolled at the end of

(continued...)

11. We adopt these modifications to our rules to promote early communication between wireless carriers and PSAPs, who must necessarily work together to accomplish E911 implementation. As a matter of “best practice,” we strongly encourage PSAPs to submit readiness documentation to wireless carriers simultaneously with their requests for E911 service, to avoid any delay in the implementation of E911 service. However, we recognize that it may not always be possible to supply such information simultaneously with the PSAP’s request for E911 service, for example in situations where a single, centralized agency handles all E911 requests within a state. Thus, we adopt parallel 15-day timeframes for carrier requests and PSAP responses, to expedite the E911 implementation process.

12. These 15-day timeframes should both reduce a carrier’s ability to use a documentation request as a delaying tactic, and minimize unnecessary carrier expenditures in those situations where the PSAP is unable to demonstrate that it will be ready to receive and utilize the requested E911 information by the end of the six-month period allotted for carrier compliance. We find that these corresponding 15-day windows allow an appropriate amount of time for both carriers and PSAPs to assess the facts regarding a particular request for E911 implementation, and to gather and submit necessary information, but do not impinge substantially on the six-month E911 implementation deadline. Where a PSAP is not able to respond to a documentation request received early in the implementation process within the 15 day response period, we find it reasonable to toll the six-month deadline until such response is forthcoming.

13. We note that the Emergency Services Interconnection Forum (**ESIF**), a group of representatives from the PSAP community and from the wireless telecommunications industry, is presently drafting guidelines concerning the types of predictive documentation that best indicate the state of a PSAP’s readiness. We anticipate that these consensus-based guidelines will prove helpful in identifying information that will assist each party to fulfill its responsibilities under the Commission’s rules governing E911, and in so doing will further facilitate prompt implementation of the service.

14. The intent of the readiness documentation rules we adopted in the *City of Richardson Order* was to provide a mechanism by which PSAPs could trigger the six-month implementation period applicable to wireless carriers, while at the same time using this six-month window to complete their own Phase II preparations. The rules did not expressly speak to situations in which a PSAP has made the up-front readiness showing necessary to trigger Phase II implementation, but turns out to be incapable of receiving Phase II information at the end of the six-month implementation period. These situations place wireless carriers in a seemingly impossible position – under a literal reading of our rules, they are obligated to complete E911 Phase II implementation and begin delivering location information to the PSAP within the six-month timeframe, but they cannot fulfill this obligation until the PSAP is prepared to receive the Phase II data. It was not our intent to impose liability in these circumstances. Accordingly, we clarify that in these situations – *i.e.*, when the carrier is unable to begin providing Phase II service at the end of the six-month period because the PSAP is in fact not capable of receiving and utilizing the Phase II information – the carrier will not be held in violation of our rules for failing to deliver timely service.

15. To address such circumstances, we amend section 20.18(j) in several respects. First, we clarify that the readiness showing is for the purpose of *commencing* the wireless carrier’s six-month

(...continued from previous page)

the PSAP’s 15-day response period and will resume when the PSAP provides the requisite documentation. For example, in a case where the carrier waits until the 15th day to challenge a PSAP’s request and the PSAP fails to respond within the requisite 15-day period, the six-month period will be tolled at the close of the 30th day. The date on which the PSAP provides the necessary documentation will restart the clock on the 31st day of the carrier’s six-month implementation period.

implementation obligation.¹⁶ In addition, we establish a procedure whereby wireless carriers that have completed all necessary steps toward E911 implementation that are not dependent on PSAP readiness may have their six-month compliance obligation temporarily tolled.” Specifically, where a wireless carrier that has taken all such steps determines that a PSAP will not be capable of receiving and utilizing E911 information at the end of the six-month implementation period, it may, after consultation with the PSAP, file a certification to that effect with the Commission.”

16. As a prerequisite to filing such a certification, no later than **21** days prior to such filing, the wireless carrier must notify the affected **PSAP**, in writing, of its intent to file a certification that the PSAP is not ready to receive and use E911 information and simultaneously provide the PSAP with the text of the certification to be filed with the Commission. Within those 21 days, the PSAP may respond to the carrier notification, for instance, to affirm that it is not ready to receive E911 information or to challenge the carrier’s characterization of its state of readiness. Any response that the carrier receives from the PSAP must be included with the carrier’s certification filing. If a carrier receives an objection from the PSAP, the carrier is unable to avail itself of the certification process, but must file with the Commission its proposed certification and the PSAP response.

17. The certification should be in the form of an affidavit, signed by a director or officer of the carrier, filed at the end of the six-month implementation period; a copy must also be served on the PSAP.¹⁹ In its affidavit the carrier must document: **1)** the basis for its conclusion that the PSAP will not be ready; **2)** all of the specific steps the carrier has taken to provide the E911 service requested; **3)** the reasons why further progress on implementation cannot be made until the PSAP becomes capable of receiving and using E911 data; and **4)** the specific steps that remain to be completed by the wireless carrier, and to the extent known, by the PSAP or other involved parties, before the wireless carrier can provide the requested E911 service. All affidavits must be correct. The certifying director or officer has the duty to personally determine that the affidavit is correct. If it is incorrect or incomplete, he or she, as well as the carrier, will be subject to Commission action, including action by the Commission or the Enforcement Bureau for false or misleading statements, where appropriate.

¹⁶ See Letter from John T. Scott, III, Vice President and Deputy General Counsel, Regulatory Law, Verizon Wireless, to Marlene H. Dortch, Secretary, FCC (August 19, 2002) (Verizon August 19 *ex parte*); see also Sprint *ex parte* letter dated Sept. 9, 2002 (Sprint September 9 *ex parte*).

¹⁷ In a letter from from the Presidents of the National Emergency Number Association, the Association of Public-Safety Communications Officials-International, Inc., and the National Association of State Nine One One Administrators, to Marlene H. Dortch, Secretary, FCC (September 20, 2002) (NENAPCOMASNA September 20 *ex parte*), the three groups argued that “any relief from the six month requirement should be contingent upon there being an agreement between the carrier and the relevant PSAP that the date needs to be extended.” Conversely, the Cellular Telecommunications & Internet Association (CTIA) and a number of carriers have argued that “the Commission amend Section 20.28(j) of the Commission’s rules to state that wireless carrier shall begin delivering Phase II data within six months of the PSAP request or within 120 days after a PSAP is in fact capable of receiving or using the Phase II data, whichever is later.” Letter from Christopher Day, CTIA to Marlene H. Dortch, Secretary, FCC (September 17, 2002). See also, Letter from Luisa L. Lancetti, Sprint PCS to Marlene H. Dortch, Secretary FCC (September 24, 2002). We determine that the certification approach adopted herein provides the most appropriate balance between these two positions, and will best serve to ensure the timely and effective roll-out of E911 service nationwide.

¹⁸ For purposes of the certification process, all parties are reminded of the cost-allocation point for E911 implementation and associated obligations for PSAPs and wireless carriers affirmed in the recently adopted **King County Order on Reconsideration**. Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling System, CC Docket No. 94-102, Order on Reconsideration, rel. July 24, 2002 (**King County Order on Reconsideration**),

¹⁹ The carrier’s certification and service on the PSAP shall conform to the filing and service procedures set forth in sections 1.45 and 1.47, respectively, of the Commission’s rules. 47 CFR §§ 1.45, 1.47.

18. Upon filing and service of such a certification, the carrier may suspend further implementation efforts. **Of** course, the accuracy of the carrier's affidavit may be challenged in writing." The Commission also retains the discretion, even in the absence of such a challenge, to investigate a carrier's certification on its own motion and take enforcement action if appropriate. If a wireless carrier's certification **is** facially inadequate, the six-month implementation period will not be suspended. If a carrier's certification is determined to be inaccurate, the wireless carrier will be liable for noncompliance as if the certification had not been filed. If the Commission finds that the PSAP in fact was prepared to receive the Phase **II** data, we will find the carrier in violation of its obligations as of the date the original six-month period expired and take appropriate action. Further, if a carrier demonstrates a practice of filing inadequate or incomplete certifications for the purpose of delaying its responsibilities, even if the certifications are not false, we will not hesitate to take action.

19. The rule modifications that we adopt today further provide that a carrier whose implementation obligation has been suspended based on its filing of a certification must begin delivering E911 service to the PSAP within 90 days after the PSAP provides the carrier with written notice that it is capable of receiving and utilizing the data elements associated with the requested E911 service."

20. **All** deadlines to complete PSAP requests for E911 service, whether established in Commission rules or orders, including orders incorporating the terms of consent decrees negotiated between the Commission and particular carriers, will be subject to this certification process. In addition, wireless carriers may file and serve certifications regarding PSAP requests that have been pending for longer than six months no later than 60 days from the date of release of this order. However, such certifications cannot be based on a PSAP's failure to comply with rules regarding the commencement of the six-month period that were not in place at the time of the original PSAP request for E911 service.

21. We emphasize that a carrier's certification cannot be based, either directly or indirectly, on circumstances attributable to **its** own failure to comply with the Commission's E911 rules, such as nonperformance or delays attributable to its own vendors, manufacturers or third party service providers. Nor can a carrier sit back during the six-month period and wait to see if the PSAP will actually be ready to receive and utilize the data elements by the end of the six-month period. Under the modifications we adopt today, the carrier must document not only those facts that establish the PSAP's inability to perform by the end of the six-month period, but also the specific, concrete steps the carrier itself has taken during the six-month period to provide the service requested."

B. LEC Upgrades to ALI Database

22. **Background.** Sprint argues in its Petition that our rules should be amended to require that the PSAP obtain the LEC's written commitment to complete the required **ALI** database upgrades within the

²⁰ Such a challenge could take, for instance, the **form** of a request for declaratory filing or of a formal complaint tiled under Section 208 of the Communications Act of 1934, as amended (47 U.S.C. 208) and would be required to be served on the carrier in accordance with section 1.47 of the Commission's rules. 47 CFR §1.47. Challenges in the form of Section 208 formal complaints must comply with the Commission's formal Section 208 complaint procedures. See 47 CFR §§1.720-1.736.

²¹ The PSAP must serve this notice upon the carrier in compliance with section 1.47 of the Commission's rules. 47 CFR § 1.47.

²² For example, these steps would include, but are not limited to: 1) completing all hardware and software upgrades necessary in the carrier's own network to provision E911 service and performing any necessary internal testing of these upgrades; 2) arranging for provision of any trunking necessary to connect the carrier's facilities to the 911 system (e.g., **trunks** from the carrier's mobile switching center (MSC) to the Selective Router); and 3) establishing and maintaining contact with the PSAP to obtain any information necessary to complete the deployment process.

six-month period.²³ Other callers agree with Sprint's position and argue that the Commission should not assume that upgrades will be completed without requiring PSAPs to obtain firm commitments from LECs.²⁴ Public safety organizations, on the other hand, argue that because the provision of LEC upgrades is largely beyond the control of PSAPs in most cases, requiring each PSAP to obtain the LEC's commitment to provide such upgrades within the six-month implementation timeframe would be an unnecessary burden.²⁵ In the alternative, Sprint suggests that PSAPs be required to furnish, or LECs be required to publish, a LEC's **ALI** database upgrade schedules as a means of verifying that the upgrades will be accomplished within the six-month period.²⁶

23. Discussion. We decline to adopt Sprint's suggestion. The existing rule already requires a PSAP to take steps necessary to prepare for implementation by demonstrating that it has made a timely request to the appropriate LEC for necessary trunking and other facilities."

24. With respect to Sprint's alternative proposal, we decline to impose an obligation on PSAPs to provide information about LECs' schedules for **ALI** database upgrades, because PSAPs are not in the best position to furnish such documentation. LECs, not PSAPs, are the best source of information on the status of LEC upgrades to the E911 network. We note, in this regard, that the Wireless Telecommunications Bureau recently requested information on anticipated E911 system upgrades from the six major LECs to assist PSAPs in their preparations to receive and utilize E911 service.²⁸ Such information also has proven helpful in assessing LECs' performance in providing those system upgrades necessary to the deployment of wireless E911 service.

25. We continue to be very concerned about the potential threat to timely wireless E911 deployment posed by a delay or lack of cooperation on the part of LECs. As the Bureau noted in its information requests, the Commission has recognized throughout the course of the E911 proceeding that LECs play a vital role in wireless E911 implementation because they own and operate most of the country's 911 systems. LECs have an obligation to provide nondiscriminatory access to, and interconnection with, their networks for the provision of 911 and E911 services to wireless callers. Such interconnection is an essential component of end-to-end wireless E911 service. To ensure that LECs timely perform their role in the successful deployment of wireless E911 service, we direct the Bureau to collect additional information from LECs periodically regarding the status of their efforts in connection with wireless E911 deployment to **PSAPs** and to consumers. Should we determine from these filings, or from other information, that LECs are failing to discharge their responsibilities with respect to E911, we will not hesitate to use the enforcement tools at our disposal, as appropriate, to ensure that each LEC meets its existing statutory obligations to provide access to, and interconnection with, its network for E911 purposes. We also retain the option of imposing, if it does become necessary, additional, detailed obligations on LECs, through rulemaking proceedings, to ensure that they do not become an obstacle to the rapid deployment of this vital service.

²³ Sprint Petition at 6-7.

²⁴ See e.g., Nextel Comments at 3, CTIA Comments at 4, Dobson Comments at 5-6, Voicestream Comments at 2-4.

²⁵ See APCO Comments at 2-3; see also APCO Reply Comments at 3, Verizon Telephone Comments at 1-2, City of Richardson Comments at 7-8.

²⁶ Sprint Petition at 6-7

²⁷ 47 CFR § 20.18(j).

²⁸ See July 29, 2002 letters from Thomas I. Sugrue, Chief, Wireless Telecommunications Bureau to ALLTEL Corporation, BellSouth Corporation, Qwest Communications, SBC Communications, Sprint Communications, and Verizon Communications.

C. Standardized Interface

26. **Background.** Sprint requests in its Petition that PSAPs be required to adopt a standardized interface for the connection between the carrier's MPC and the ALI database, an argument that was initially raised, and addressed, in the original *City of Richardson* decision.²⁹ In the alternative, Sprint suggests that, if a customized interface is used, the Commission should extend the six-month deadline for carrier implementation of Phase II service and require that the customized upgrade adopted include the ability to "pull" or refresh data from the MPC after call set up has been completed.³⁰ In *City of Richardson* the Commission declined to require carriers to adopt the E-2 interface for the connection between the ALI database and the carrier's MPC.³¹ We agreed with several commenters that such a proposal went well beyond the issues raised by the City of Richardson and would constitute a policy of "micromanagement" at variance with the Commission's general policy of declining to dictate technical standards for the implementation of Phases I and II of E911 service.³²

27. **Discussion.** We affirm our decision not to mandate the use of a standardized interface. We recognize that, in several instances, the use of a standardized interface may be beneficial from the perspective of PSAP, wireless carrier, and LEC alike, to facilitate coordination between the parties and to avoid impediments to a smooth and timely rollout of Phase II service.³³ In such light, we strongly encourage the parties to implement a standardized interface where it would be efficient to do so. We continue to believe, however, that negotiation between the parties represents the most productive means of deciding such matters. Moreover, as one commenter points out, no showing has been made in the record that a single standard needs to be imposed across the board.³⁴ Thus, we reaffirm our finding that it would be counterproductive for us to dictate technical solutions best evaluated by the parties, and we decline to mandate the use of the E-2 interface at this time.

28. We also reject Sprint's alternative suggestions that we extend the six-month deadline for carrier implementation of Phase II service where a customized interface has been adopted and that we require a party adopting a customized interface to ensure that this customized upgrade includes the ability to "pull" or refresh data from the MPC after call set up has been completed. To the extent that specific implementation problems or delays develop, we believe that they are better handled on a case-by-case basis.

29. We agree with representatives of the public safety community that once a "workable consensus" regarding readiness has been reached, "the problem of halting and resuming work in 'unready' areas should resolve itself because the parties probably could work out their own schedules."³⁵

²⁹ See Sprint Petition at 7-9. See also Dobson Comments at 7 n.17, CTIA Comments at 5, Nextel Comments at 4, NDNC Comments at 5, NDNC Reply Comments at 3-4, VoiceStream Comments at 7-8. But see APCO Comments at 3, City of Richardson Reply Comments at 10-11. APCO states that mandating use of the E-2 interface could discourage carrier efforts at more rapid provision of location data. APCO Reply Comments at 4. In addition, APCO "reject[s] VoiceStream's claim that a 'refresh' capability is required by Section 20.18(j)." APCO Reply Comments at 4.

³⁰ Sprint Petition at 9-12. See also Sprint Reply Comments at 5-9, NDNC Comments at 5, NDNC Reply Comments at 3-4, VoiceStream Comments at 7-8, VoiceStream Reply Comments at 5.

³¹ *City of Richardson* at para. 19.

³² *Id.*

³³ See, e.g., Nextel Comments at 3-4.

³⁴ City of Richardson Reply Comments at 10-11.

³⁵ See NENA/APCO/NASNA September 20 *ex parte* (citing Letter from James R. Hobson to Marlene H. Dortch, Secretary, FCC, filed August 30, 2002).

Thus, we take this opportunity to codify longstanding Commission policy, by clarifying that nothing in our rules prevents a carrier and a PSAP from mutually agreeing to implementation schedules at variance with the six-month deadlines specified in section 20.18(d), (f), and (g)(2).³⁶ Such clarification should encourage negotiation between the parties to tailor the implementation process to best suit specific situations that they face.” Where an agreement between the parties cannot be reached, however, the deadlines set forth in section 20.18 apply.

D. APA Requirements

30. **Background.** Cingular contends in its Petition that the decision in *City of Richardson* is invalid as a procedural matter because it violates several provisions of the APA.³⁸ It asserts that the decision violates section 553(b) and (c) of the APA because the phrase “is capable” in section 20.18(j) cannot be interpreted to mean “will be capable” and a formal notice and comment rulemaking was thus required under section 553 to effect this modification to the Commission’s rules. Cingular alleges that, although the rule amendment was issued by the Commission, the Public Notice advising of the Commission’s receipt of a request for clarification from the City of Richardson and seeking comments thereon was issued by the Bureau and thus did not constitute valid notice under section 553(b) and (c).³⁹ Cingular also contends that the Commission’s citation to *Sagebrush Rebellion*⁴⁰ in defense of the Order’s procedural sufficiency is inapposite,⁴¹ and that the policy adopted with respect to PSAP readiness cannot be considered a “logical outgrowth of prior Commission actions taken in the E911 docket.”⁴² Finally, Cingular argues that the decision violates a requirement in section 706 of the APA that the agency explain the need for a rule amendment.⁴³

31. **Discussion.** In *City of Richardson* the Commission found that the Bureau’s notice complied with the spirit of the notice and comment requirement in section 553 and the concept of “logical outgrowth.”⁴⁴ We noted that several parties had raised APA concerns with an interpretation of the Commission’s rules that would allow a PSAP to request E911 services before it is fully capable of

³⁶ See Sprint September 9 *ex parte*.

³⁷ See, e.g., *King County Order an Reconsideration* at para. 10.

³⁸ Cingular Petition at 10-11. Section 553(b) of the APA provides, with exceptions not relevant here, that a “[g]eneral notice of proposed rule making shall be published in the *Federal Register*.” Section 553(c) provides further that “[a]fter notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through the submission of written data, views, or arguments.” None of the commenters addressed Cingular’s APA argument, save the City of Richardson, which opposed it. See City of Richardson Comments at 4-6.

³⁹ See Wireless Telecommunications Bureau Seeks Comment on Request for Clarification or Declaratory Ruling Concerning Public Safety Answering Point Requests for Phase II Enhanced 911, CC Docket No. 94-102, Public Notice, 16 FCC Rcd 7875 (2001). In a second Public Notice, issued on July 10, 2001, the Bureau sought comment on several suggested PSAP readiness criteria as well as other “identifiable, measurable criteria a PSAP could be required to meet to demonstrate at the time it makes a request that it has taken sufficient steps to assure that it will be able to receive and utilize the E911 data prior to the delivery of service by the carrier.” See Wireless Telecommunications Bureau Seeks Further Comment on the Commission’s Rules Concerning Public Safety Answering Point Requests for Phase II Enhanced 911, Public Notice, CC Docket No. 94-102, 16 FCC Rcd 13670, 13671 (2001) (*Second Public Notice*).

⁴⁰ *Sagebrush Rebellion v. Hodel*, 790 F.2d 760, 764-65 (1986) (*Sagebrush Rebellion*).

⁴¹ Cingular Reply Comments at 6-7.

⁴² *Id.* at 7-9.

⁴³ Cingular Petition at 10.

⁴⁴ City of Richardson at paras. 22-27.

receiving and utilizing the Phase I or Phase II data elements.⁴⁵ In speaking to this issue, we observed that courts have taken a “pragmatic” approach when interpreting section 553 in the context of specific rulemaking proceedings and have found valid those rules promulgated after the agency’s issuance of a notice that “fairly apprise[s] interested parties of the issues involved, so that they may present responsive data or argument relating thereto.”⁴⁶ We find that the *Second Public Notice* issued by the Bureau on July 10, 2001, and published by the Commission in that part of the *Federal Register* for July 16, 2001, containing proposed rules,⁴⁷ did just that. We note that the rule amendment ultimately adopted was based on the record compiled as a result of the call for comments in the *Second Public Notice*.

32. Moreover, contrary to Cingular’s assertions, the rule amendment adopted in *City of Richardson* does constitute a “logical outgrowth” of earlier proposals identified in this proceeding⁴⁸ and required no additional notice and comment prior to enactment by the Commission. It represents the fine-tuning over time of the respective responsibilities of wireless carriers and PSAPs in implementing E911. As we noted in *City of Richardson*, several commenters responding to the original notice of proposed rulemaking, or to a supplemental request for comment, actually addressed the question of PSAP capability to use the location information supplied by the wireless carrier.⁴⁹ This demonstrates an awareness on the part of interested parties that the questions of prerequisites to a wireless carrier’s E911 service obligations and the role of PSAPs in triggering those obligations had been raised in the initial notice of proposed rulemaking.

33. Finally, we disagree that our decision in *City of Richardson* failed to comply with the requirement in section 706 of the APA that an agency provide a reasoned basis for its decision.⁵⁰ In *City of Richardson*, we carefully evaluated each option available to us in crafting a rule that would balance the needs of the parties and provide wireless carriers, in particular, with sufficient certainty before their expenditure of the monies required to implement E911.⁵¹ We examined each option and provided a basis for either accepting or rejecting that option. Under the circumstances, it cannot be said that our decision was arbitrary or without sufficient foundation in the record. Thus, we continue to conclude that our decision in *City of Richardson* is in full compliance with the APA.

E. Regulatory Flexibility

34. *Background.* In comments, RCA and several smaller carriers argue that we should impose an actual-readiness requirement for rural, small and mid-sized wireless carriers that do not have a large customer base to absorb their E911 implementation costs, and that are thus more vulnerable to delays in implementation caused by a PSAP’s inability to receive and utilize the E911 data supplied by the

⁴⁵ *Id.* at para. 22.

⁴⁶ See Sen. Doc. 248.79” Cong. 2d Sess. 200 (1946).

⁴⁷ 66 Fed. Reg. 36989 (Jul. 16, 2001).

⁴⁸ *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, RM-8143, *Notice of Proposed Rulemaking*, 9 FCC Rcd 6170 (1994) (*E911 Notice of Proposed Rulemaking*). RM-8143 was incorporated into CC Docket No. 94-102 in the *E911 First Report and Order*, in which the Commission imposed the PSAP capability requirement. See *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, *Perition of City of Richardson*, CC Docket No. 94-102, *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 18676, 18684 (para. 11) (1996) (*E911 First Report and Order*).

⁴⁹ *City of Richardson* at para. 27.

⁵⁰ The requirement that an agency provide a reasoned basis for its decision is implicit in Section 706’s provisions concerning the scope of judicial review with respect to agency decisions. See 5 U.S.C. 706.

⁵¹ *City of Richardson* at paras. 12-21

carrier.⁵²

35. **Discussion.** As we stated in *City of Richardson*, we are sympathetic to the concerns of smaller carriers, but, in light of the critical nature of our E911 rules and the need for ubiquitous, reliable emergency services, it is imperative that all wireless carriers, regardless of size, comply with the rule in section 20.18(j), as amended.⁵³ The rule as amended attempts to balance the concerns of all parties, including those that may be **small** entities, and should encourage **all** parties to work together to minimize delays and financial risk. To decide that the PSAP must be capable of using the data on the date of the request would place all of the risk and uncertainty on the PSAPs, many of whom are themselves small entities, and could result in a needless delay in the use of this life saving technology.”

IV. CONCLUSION

36. The clarifications and amendments we adopt today provide additional guidance on the issue of PSAP readiness. We have taken these actions in an effort to facilitate communication between the parties on how best to implement E911 on the particular network at issue so as to promote a timely and effective roll-out of E911 service nationwide.

V. PROCEDURAL MATTERS

A. Regulatory Flexibility Act

36. As required by the Regulatory Flexibility Act of 1980(RFA),⁵⁴ the Commission has prepared a Supplemental Final Regulatory Flexibility Analysis (FRFA) of the estimated significant economic impact on small entities of the policies and rules adopted in the Order on Reconsideration. The analysis is found in Appendix C. The Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Order on Reconsideration, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

B. Paperwork Reduction Act of 1995 Analysis

37. This Order on Reconsideration contains new information collections. As part of our continuing effort to reduce paperwork burdens, we invite the general public to take this opportunity to comment on the information collections contained in this Order on Reconsideration as required by the Paperwork Reduction Act of 1995.⁵⁵ Public and agency comments are due 60 days from the date of publication of this Order on Reconsideration in the Federal Register. Comments should address:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility.
- The accuracy of the Commission’s burden estimates.
- Ways to enhance the quality, utility, and clarity of the information collected.

⁵² See, e.g., RCA Comments at 2-3.

⁵³ *City of Richardson* at para. 29.

⁵⁴ NTCA concedes that adopting its position would cause a PSAP to wait months for Phase II service. See NTCA Comments at 4.

⁵⁵ 5 U.S.C. § 603.

⁵⁶ See Pub. L. No. 104-13.

- Ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith Boley Herman, Federal Communications Commission, Room 1-C804, 445 Twelfth Street, S.W., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov and to Kim A. Johnson, Policy Analyst, Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), Docket Library, Room 10236, New Executive Office Building (NEOB), 725 17th Street, N.W., Washington, D.C. 20503 or via the Internet at Kim_A._Johnson@omb.eop.gov.

C. Authority

38. This action is taken pursuant to Sections 1, 4(i), 201, 303,309, and 332 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 154(i), 201,303,309,332.

D. Further Information

39. For further information, contact Jennifer Salhus of the Policy Division, Wireless Telecommunications Bureau, at 202-418-1310 (voice) or 202-418-1169 (TTY).

VI. ORDERING CLAUSES

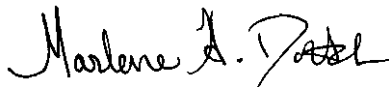
40. Accordingly, IT IS ORDERED that the Petition for Reconsideration filed by Sprint is GRANTED to the extent provided herein and that the Petition is otherwise DENIED.

41. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by Cingular is DENIED.

42. IT IS FURTHER ORDERED that Part 20 of the Commission's rules IS AMENDED as set forth in Appendix B and that the amendment shall become effective 30 days after the date of publication of a summary of this Order in the Federal Register, except for those rule amendments involving Paperwork Reduction Act burdens, which will become effective upon OMB approval of those burdens.

43. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

APPENDIX AComments/Oppositions

Association of Public Safety Communications Officials-International. Inc. (APCO), National Emergency Number Association (NENA), National Association of State Nine One One Administrators (NASNA), and Tarrant County, Texas 9-1-1 District (Tarrant County)
Cellular Telecommunications & Internet Association (CTIA)
Dobson Communications Corporation (Dobson)
Nextel Communications, Inc. (Nextel)
North Dakota Network Co. (NDNC)
City of Richardson (Richardson)
Rural Cellular Association (RCA)
Verizon Telephone Companies (Verizon)
VoiceStream Wireless Corporation (VoiceStream)

Reply Comments

APCO, NENA, NASNA and Tarrant County
Cingular Wireless LLC (Cingular)
NDNC
Sprint PCS (Sprint)
VoiceStream

Appendix B**FINAL RULES**

Part 20 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 20 - COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. §§ 154, 160, 251-254, 303, and 332.

2. Section 20.18(j) is revised to read as follows:

§ 20.18 911 Service.

* * * * *

(j) Conditions for enhanced 911 services. (1) Generally. The requirements set forth in paragraphs (d) through (h) of this section shall be applicable only if the administrator of the designated Public Safety Answering Point ~~has~~ requested the services required under those paragraphs and the Public Safety Answering Point is capable of receiving and utilizing the data elements associated with the service and a mechanism for recovering the Public Safety Answering Point's costs of the enhanced 911 service is in place.

(2) Commencement of six-month ueriod. (i) Except as provided in subparagraph (ii) of this subsection, for purposes of commencing the six-month period for carrier implementation specified in paragraphs (d), (f) and (g) of this section, a PSAP will be deemed capable of receiving and utilizing the data elements associated with the service requested, if it can demonstrate that it has:

(A) ordered the necessary equipment and has commitments from suppliers to have it installed and operational within such six-month period and

(B) made a timely request to the appropriate local exchange carrier for the necessary trunking, upgrades, and other facilities.

(ii) For purposes of commencing the six-month period for carrier implementation specified in paragraphs (f) and (g) of this section, a PSAP that is Phase I-capable using a Non-Call Path Associated Signaling (NCAS) technology will be deemed capable of receiving and utilizing the data elements associated with Phase II service if it can demonstrate that it has made a timely request to the appropriate local exchange carrier for the ALI database upgrade necessary to receive the Phase II information.

(3) Tolling of six-month ueriod. Where a wireless carrier has served a written request for documentation on the PSAP within 15 days of receiving the PSAP's request for Phase I or Phase II enhanced 911 service, and the PSAP fails to respond to such request within 15 days of such service, the six-month period for carrier implementation specified in paragraphs (d), (f), and (g) of this section will be tolled until the PSAP provides the carrier with such documentation.

(4) Carrier certification regarding PSAP readiness issues. At the end of the six-month period for carrier implementation specified in paragraphs (d), (f) and (g) of this section, a wireless carrier that believes that the PSAP is not capable of receiving and utilizing the data elements associated with the service requested may file a certification with the Commission. Upon filing and service of such certification, the carrier may suspend further implementation efforts, except as provided in paragraph (j)(4)(x) of this section.

- (i) As a prerequisite to filing such certification, no later than 21 days prior to such filing, the wireless carrier must notify the affected PSAP, in writing, of its intent to file such certification. Any response that the carrier receives from the PSAP must be included with the carrier's certification filing.
- (ii) The certification process shall be subject to the procedural requirements set forth in sections 1.45 and 1.47 of this chapter.
- (iii) The certification must be in the form of an affidavit signed by a director or officer of the carrier, documenting:
- (A) the basis for the carrier's determination that the PSAP will not be ready;
- (B) each of the specific steps the carrier has taken to provide the E911 service requested;
- (C) the reasons why further implementation efforts cannot be made until the PSAP becomes capable of receiving and utilizing the data elements associated with the E911 service requested; and
- (D) the specific steps that remain to be completed by the wireless carrier and, to the extent known, the PSAP or other parties before the carrier can provide the E911 service requested.
- (iv) All affidavits must be correct. The carrier must ensure that its affidavit is correct, and the certifying director or officer has the duty to personally determine that the affidavit is correct.
- (v) A carrier may not engage in a practice of filing inadequate or incomplete certifications for the purpose of delaying its responsibilities.
- (vi) To be eligible to make a certification, the wireless carrier must have completed all necessary steps toward E911 implementation that are not dependent on PSAP readiness.
- (vii) A copy of the certification must be served on the PSAP in accordance with section 1.47 of this chapter. The PSAP may challenge in writing the accuracy of the carrier's certification and shall serve a copy of such challenge on the carrier. *See* sections 1.45 and 1.47 and sections 1.720-1.736 of this chapter.
- (viii) If a wireless carrier's certification is facially inadequate, the six-month implementation period specified in paragraphs (d), (f) and (g) of this section will not be suspended as provided for in paragraph (j)(4) of this section.
- (ix) If a wireless carrier's certification is inaccurate, the wireless carrier will be liable for noncompliance as if the certification had not been filed.
- (x) A carrier that files a certification under paragraph (j)(4) of this section shall have 90 days from receipt of the PSAP's written notice that it is capable of receiving and utilizing the data elements associated with the service requested to provide such service in accordance with the requirements of paragraphs (d) through (h) of this section.
- (5) Modification of deadlines by agreement. Nothing in this section shall prevent Public Safety Answering Points and carriers from establishing, by mutual consent, deadlines different from those imposed for carrier and PSAP compliance in paragraphs (d), (f), and (g)(2) of this section.

* * * * *

Appendix C

SUPPLEMENTAL FINAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act (RFA),¹ a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities was incorporated in the Order in CC Docket No. 94-102² released on October 17, 2001. The Order on Reconsideration (Recon Order) adopted in this decision directly relates to matters addressed in the previous Order. This Supplemental Final Regulatory Flexibility Analysis (supplemental FRFA) therefore considers only that information which has changed since the release of the FRFA. In all other respects, the FRFA remains accurate. This Supplemental FRFA conforms to the RFA.³

A. Need for, and Objectives of, the Recon Order

In response to petitions for reconsideration, the Commission amends its rules to clarify what constitutes a valid Public Safety Answering Point (PSAP) request so as to trigger a wireless carrier's obligation to provide enhanced 911 (E911) service to that PSAP within six months. Specifically, the Recon Order adopts procedural guidelines for requesting documentation predictive of a PSAP's readiness to receive and utilize the E911 service it has requested, by specifying that where a wireless carrier requests such documentation from a PSAP within 15 days of receiving the PSAP's request for E911 service, the PSAP must respond within 15 days or the carrier's six-month implementation period will be tolled until such documentation is provided. The Recon Order also clarifies that the PSAP readiness showing is for the purpose of *commencing* the wireless carrier's six-month implementation obligation, and establishes a procedure whereby wireless carriers that have completed all necessary steps toward E911 implementation that are not dependent on PSAP readiness may have their compliance obligation temporarily tolled, if the PSAP is not ready to receive the information at the end of the six-month period and the carrier files a certification to that effect with the Commission. Finally, the Recon Order clarifies that nothing in the Commission's rules precludes wireless carriers and PSAPs from mutually agreeing to an implementation schedule different from that prescribed by the Commission's rules.

The actions adopted in the Recon Order are intended to promote communication between wireless carriers, local exchange carriers (LECs) and PSAPs and to provide further clarity regarding their respective obligations in implementing wireless E911. Wireless E911 implementation is very situation-specific and can vary significantly from jurisdiction to jurisdiction and from carrier to carrier, depending on a number of factors. The clarifications adopted in the Recon Order are intended to facilitate the implementation process by encouraging parties to communicate with each other early in the E911 implementation process, and to maintain a constructive, on-going dialog throughout the implementation process.

B. Summary of Significant **Issues** Raised by the Public in Response to the FRFA

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601 *et. seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAA). Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² Order In the Matter of Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems: Petition of City of Richardson, Texas, 16 FCC Rcd 18982, Appendix C.

³ See 5 U.S.C. § 604.

The Commission received two petitions for reconsideration of its decision in the Order. One petitioner, Cingular Wireless LLC (Cingular) raises several procedural arguments against the validity of the decision adopted in the Order, based on the requirements of the Administrative Procedure Act. In support, several small carriers filed comments also challenging the decision on a procedural basis, arguing that the decision contravenes the provisions of the RFA because it does not take account of, and attempt to reduce, the disproportionate burdens placed on small and rural carriers. These smaller carriers maintain that, in order to minimize the danger of unnecessary economic outlay on small carriers, the Commission should impose an actual-readiness requirement on PSAPs operating in areas where rural, small and mid-sized carriers do not have a large customer base to absorb their E911 implementation costs and are thus more vulnerable to delays in implementation caused by a PSAP's inability to receive and utilize the E911 data supplied by the carrier. As discussed in pages 2 and 3 of the FRFA and in paragraphs 34 and 35 of the Recon Order, the Commission is aware of the concerns of small and mid-sized rural carriers and discussed these concerns in the FRFA. However, as the Commission has iterated throughout this proceeding, any failure in E911 communications, regardless of whether the carrier is small or large, or whether the carrier has a large customer base or small, can result in tragedy. Nonetheless, the Commission has tried wherever possible to ease the regulatory burden in this proceeding on small entities. The Commission's phased in approach to E911 implementation is an example of this desire to accommodate the needs of small entities where it does not compromise our commitment to the goals of this proceeding.

The FRFA addresses the issue of whether to adopt an actual-readiness requirement on PSAPs and finds that the readiness showing adopted in the Order "will in fact reduce the vulnerability of the smaller carriers, as they will be working along with the PSAPs to ensure implementation of E911 service on a timely basis, and will better be able to plan their progression and allocation of resources during the implementation process ...". The FRFA concludes that, "Considering the potential burdens placed on all small entities, we find that the institution of objective criteria by rule amendment will benefit all PSAPs and carriers, including small entities, by more clearly defining E911 readiness, thus reducing the potential for misunderstanding between parties, and by reducing instances of delay in E911 implementation. In turn, this will reduce the likelihood that any PSAP or carrier, including all small entities, will have to expend its limited capital resources prematurely and/or improvidently."

The Recon Order does take several steps to mitigate the economic risk to smaller carriers. First, as discussed in paragraphs 9-12, the Recon Order responds to carrier comment that indicates the present rule does not specify time limits for responding to a carrier's request for PSAP readiness documentation, by establishing that where a wireless carrier requests readiness documentation in writing within 15 days of receiving the PSAP's request for E911 service, the PSAP will have 15 days to provide such documentation. The Commission believes that these 15-day timeframes will both reduce a carrier's ability to use a documentation request as a delaying tactic, and minimize unnecessary carrier expenditures in those situations where the PSAP is unable to demonstrate that it will be ready to receive and utilize the requested E911 information by the end of the six-month period allotted for carrier compliance. The Recon Order also acknowledges, as discussed in paragraph 14, that the current rules do not provide for situations where a PSAP has made the upfront readiness showing necessary to trigger Phase II implementation, but turns out to be incapable of receiving Phase II information at the end of the six-month implementation period. To address such situations, the Recon Order modified the Commission's rules in several respects. These modifications are set out in detail in paragraphs 15-21 of the Recon Order. For example, the Recon Order establishes a procedure which allows wireless carrier that have completed all necessary steps towards E911 implementation may certify to the Commission at the end of the six-month implementation period that they have taken such steps and believe that a PSAP will not be capable of receiving and utilizing E911 information at the end of the six-month implementation period. Upon filing and service of such certification, the carrier may suspend further implementation efforts as discussed in paragraph 18 of the Recon Order. In addition, in paragraph 29, the Recon Order codifies longstanding Commission policy by clarifying that nothing prevents a carrier and a PSAP from mutually

agreeing to implementation schedules at variance with the six-month deadlines specified in the Commission's E911 rules. This codification should encourage parties to tailor the E911 implementation process to best suit specific situations that they face, and may provide substantial flexibility both to small wireless carriers and to small public safety agencies that are able to agree to alternative implementation schedules.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁵ In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities.⁶ Nationwide, there are 4.44 million small business firms, according to SBA reporting data.⁷

Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁸ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations.⁹

The definition of "small governmental jurisdiction" is one with populations of fewer than 50,000.¹⁰ There are approximately 85,006 governmental jurisdictions in the nation.¹¹ This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or ninety-six percent, have populations of fewer than 50,000.¹² The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, we estimate that ninety-six percent, or about 81,600, are small entities that may be affected by our rules.

⁴ 5 U.S.C. § 603(b)(3).

⁵ 5 U.S.C. § 601(6).

⁶ 5 U.S.C. § 601(3), incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632.

⁷ See 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

⁸ 15 U.S.C. § 632.

⁹ 5 U.S.C. § 601(4).

¹⁰ Department of Commerce, U.S. Bureau of the Census, 1992 Economic Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

¹¹ 5 U.S.C. § 601(5).

¹² 1992 Census of Governments, U.S. Bureau of the Census, U.S. Department of Commerce.

¹³ 1992 Census of Governments, U.S. Bureau of the Census, U.S. Department of Commerce.

Neither the Commission nor the **SBA** has developed definitions for small providers of the specific industries affected. Therefore, throughout our analysis, the Commission uses the closest applicable definition under the **SBA** rules, the North American Industry Classification System (NAICS) standards for “Cellular and Other Wireless Telecommunications” and “Wired Telecommunications Carriers.”¹⁴ According to this standard, a small entity is one with no more than 1,500 employees. To determine which of the affected entities in the affected services fit into the SBA definition of small business, the Commission will refer to Table 5.3 in *Trends in Telephone Service* (Trends) a report published annually by the Commission’s Wireline Competition Bureau.”

We have included small incumbent local exchange carriers in this **RFA** analysis. **As** noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees). and “is not dominant in its field of operation.”¹⁶ The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not “national” in scope.” We have therefore included small incumbent carriers in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission’s analyses and determinations in other, non-RFA contexts.

Local Exchange Carriers. According to the most recent Trends data, 1,329 incumbent carriers reported that they were engaged in the provision of local exchange services. We do not have data specifying the number of these carriers that are either dominant in their field of operations, or are not independently owned. However Trends indicates that 1,024 local exchange carriers report that, in combination with their affiliates, they have 1,500 or fewer employees, and would thus be considered small businesses **as** defined by NAICS.

Competitive Access Providers and Competitive Local Exchange Carriers (CAPs and CLECs). Trends indicates that 532 CAPs and CLECs, 134 local resellers, and 55 other local exchange carriers reported that they were engaged in the provision of competitive local exchange services. We do not have data specifying the number of these carriers that are not independently owned and operated. However, Trends states that 411 CAPs and CLECs, 131 local resellers, and 53 other local exchange carriers report that, in combination with their affiliates, they have 1,500 or fewer employees, for a total of 595 qualifying as small entities.

Wireless Telephone Including Cellular, Personal Communications Service (PCS) and SMR Telephony Carriers. There are **858** entities in this category as estimated in Trends, and 291 such licensees in combination with their affiliates have 1,500 or fewer employees, and thus qualify as small

¹⁴ North American Industry Classification System (NAICS) codes 513322 and 51331

¹⁵ FCC, Industry Analysis and Technology Division, *Trends in Telephone Service*, Table 5.3 (May 2002). Estimates are based on gross revenue data filed April 1, 2001, on FCC Form 499-A worksheets, combined with employment information obtained from ARMIS and Securities and Exchange Commission filings. The estimates do not reflect affiliates that do not provide telecommunications services or that operate solely outside the United States.

¹⁶ 15 U.S.C. § 632.

¹⁷ See Letter from Jere W. Glover, Chief Counsel for Advocacy, **SBA**, to William E. Kennard, Chairman, FCC, dated May 27, 1999. The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. See, e.g., *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket, 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996).

businesses using the NAICS guide as small businesses

Special Mobile Radio (SMR) Dispatch. *Trends* estimates 289 entities in this category and all 289 licensees, in combination with their affiliates, have 1,500 or fewer employees, and thus qualify as small entities using the NAICS guide.

Other Mobile Service Providers. *Trends* estimates that there are 32 providers of other mobile services, and again using the NAICS standard, all 32 providers of other mobile services utilize with their affiliates 1,500 or fewer employees, and thus may be considered small entities.

Toll Service Providers. *Trends* calculates that there are 932 toll service providers, including 229 interexchange carriers, 22 operator service providers, 32 pre-paid calling card providers, 31 satellite service carriers, 576 toll resellers, and 42 carriers providing other toll services. *Trends* further estimates that 832 toll service providers with their affiliates have 1,500 or fewer employees and thus qualify as small entities as defined by NAICS. This figure includes 181 interexchange carriers, 20 operator service providers, 31 pre-paid calling card providers, 25 satellite service carriers, 538 toll resellers, and 37 carriers providing other toll services.

Offshore Radiotelephone Service. This service operates on several TV broadcast channels that are not otherwise used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition for radiotelephone communications. The Commission assumes, for purposes of this FRFA, that all of the 55 licensees are small entities, as that term is defined by NAICS.

Public Safety Answering Points. Neither the Commission nor the SBA has developed a definition of small entities applicable to **PSAPs**. In order to give a numerical quantification of the number of PSAPs that are small entities affected by the rule modifications, it appears there are approximately 5,000 primary PSAPs nationwide. For purposes of this FRFA, we assume that all of the PSAPs are small entities, and may be affected by the rule amendments.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

As indicated in paragraphs 15-21 of the Recon Order, in order to toll the six-month implementation period, a wireless carrier must file a certification with the Commission that it has completed all necessary steps towards E911 implementation that are not dependent on PSAP readiness and that the **PSAP** is not ready to receive the information at the end of the six month period. Additionally, the Commission clarifies that nothing in our rules precludes wireless carriers and **PSAPs** from mutually agreeing to an implementation schedule different from that prescribed by the Commission's rules.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The Commission is limited in this proceeding as to minimizing the burden on small entities. The proceeding is intended to provide all Americans with the most reliable, responsive emergency services that are technologically possible. The critical nature of this goal demands that all entities involved, regardless of size, bear the same responsibility for complying with requirements adopted to expedite reaching this goal. A delay in response caused by a small entity could result in the same fatal consequences as a delay caused by a large entity

As indicated in the FRFA, the Commission considered several alternatives before reaching its final decision in the Order. First, the Commission could have left the existing rule as it stands with regards to small entities, amend the rule to remove demonstration burdens and criterion on PSAPs, or amend the rule to place a more intense demonstration burden on PSAPs, a course favored by several wireless carriers. The FRFA discusses the Commission's reasons for dismissing these alternatives in favor of the more balanced approach of minimizing the opportunity for delays in E911 implementation and unnecessary carrier expense caused by premature PSAP requests for E911 service by requiring that PSAPs provide readiness documentation when challenged by a carrier, while sparing PSAPs the excessive burden of providing full readiness documentation.

The Commission, upon review of the petitions for reconsideration of the Order, could have elected to simply deny the petitions and leave the rules as is, or it could have modified the rules to intensify the demonstration requirements on PSAPs. Instead the Commission makes certain clarifications to the rules to dispel some of the existing confusion as to PSAP readiness and the decision adopted in the Order, and modifies the rules to accommodate certain of the carrier's continuing concerns, while refraining from imposing additional burdens on PSAPs, most of whom are either small or mid-sized entities.

First, the Recon Order, in paragraphs 9-12, modifies the rules along the lines suggested by two wireless carriers by establishing the parallel IS-day timeframe for carrier requests and PSAP responses in certain instances where the PSAP does not provide readiness documentation simultaneous with its request for E911 service. The Commission takes this action to promote early communication between wireless carriers and PSAPs, to expedite the E911 implementation process, to reduce a carrier's ability to use a documentation request as a delaying tactic, while minimizing unnecessary carrier expenditures where the PSAP is unable to demonstrate that it will be E911 capable by the end of the six-month period allotted for carrier compliance. This modification thus benefits both small and mid-sized wireless carriers and PSAPs and strengthens the Commission's efforts to encourage necessary cooperation between carriers and PSAPs in achieving truly responsive E911 implementation.

Second, to address situations in which a PSAP has made the upfront readiness showing but turns out to be incapable of receiving E911 Phase II information at the end of the six-month implementation period, the Recon Order amends 47 CFR 20.18(j) in several ways. (*See* paragraphs 14-21 of the Recon Order.) The Recon Order clarifies that the readiness showing is for the purpose of commencing the wireless carrier's six-month implementation obligation. The Recon Order also establishes a certification procedure whereby wireless carriers that have completed all necessary steps toward E911 implementation that are not dependent on PSAP readiness may have their six-month compliance obligation temporarily tolled. These procedures, set out in paragraphs 15-21 of the Recon Order, minimize the financial risk to wireless carriers while providing PSAPs with an opportunity to respond and set up several other restrictions in the certification procedure to avoid abuse of the process by all parties involved.

Several wireless carrier commenters recommend that the Commission amend its rules to require that the PSAP obtain the local exchange carrier's (LEC's) written commitment to complete the required Automated Location Information (ALI) database upgrades within the six-month period. As discussed in paragraph 23 of the Recon Order, the Commission does not adopt such a regulation. In paragraph 24, the Commission also declines to adopt a second, alternative proposal that would require PSAPs to acquire copies of an LEC's schedule of ALI database upgrade, because PSAPs are not in the best position to furnish such documentation. In paragraph 25 of the Recon Order, the Commission directs the Wireless Telecommunications Bureau to collect additional information periodically from LECs regarding the status of their efforts in connection with wireless E911 deployment to PSAPs and to consumers.

Report to Congress: The Commission will send a copy of this Recon Order, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness

Act of 1996.¹⁸ In addition, the Commission will send a copy of this Recon Order, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Recon Order, and Supplemental FRFA (or summaries thereof) will also be published in the Federal Register.¹⁹

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¹⁸ 5 U.S.C. § 801 (a)(1)(A)

¹⁹ See 5 U.S.C. § 604(b)